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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1943.

No. 112.

DAVIES WAREHOUSE COMPANY, a corporation, *Petitioner*,

v.

PRENTISS M. BROWN, Price Administrator, *Respondent*.

## BRIEF ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, AMICUS CURIAE.

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### OPINION BELOW.

The opinion of the United States Emergency Court of Appeals is reported in 137 F. (2d) 201 (E. C. A. 1943 ——), and will be found in the record herein on page 109.

### PRELIMINARY STATEMENT.

The National Association of Railroad and Utilities Commissioners is a voluntary association embracing within its membership the members of the regulatory commissions and boards of the several states of the United States except two, one of which has no state regulatory commission.

By the constitution of the Association, the President of the Association may direct the General Solicitor to appear on behalf of the Association (as distinguished from a particular commission represented in its membership) in any proceeding pending before any court or commission in which, in the judgment of such President, appearance on behalf of the Association should be made. This brief is offered for filing on behalf of said Association by direction of the President, in the general public interest.

## STATEMENT OF THE CASE.

The petitioner operates a public warehouse in Los Angeles, California. Under the constitution and statutes of that state (R. 2, 3) public warehouses are declared to be "public utilities." They are subject to full and complete public utility regulation, including the regulation of maximum rates and charges, by the California Railroad Commission (R. 22, 23). The Price Administrator, purporting to act under authority of the Emergency Price Control Act of 1942 (50 U. S. C. A. App. sections 901-946), hereinafter called "Price Act," on April 28, 1942 issued a General Maximum Price Regulation (R. 46-75), followed by a Supplementary Regulation No. 11 on June 16, 1942 (R. 83-84), and an Amendment No. 1 to Supplementary Regulation No. 11 on June 23, 1942 (R. 101-105).

Taken together, these three regulations issued by the Price Administrator had the effect of subjecting petitioner's warehouse business to price control under the Price Act, and of freezing its rates and charges at the March, 1942 level. Petitioner was thereby prevented from taking advantage of an increase in certain warehouse rates authorized on May 12, 1942 by the California Railroad Commission (R. 30-36). Petitioner then filed a formal Protest with the Price Administrator, which Protest was denied on July 27, 1942 (R. 41). Two days later the Price Administrator entered orders allowing petitioner to increase its rates and

charges to the level fixed by the California Railroad Commission (R. 8).

In all other respects petitioner's rates and charges are now, if subject to the General Maximum Price Regulation, frozen at the March, 1942 level, and the increases authorized by the Price Administrator are subject to revocation or amendment at any time (R. 8). Under the Price Administrator's interpretation of the Price Act, petitioner is under the dual regulation, as to rates and charges, of the Price Administrator and the California Railroad Commission. It is conceded by all parties that petitioner has been aggrieved by the denial of its Protest.

The petitioner, on August 20, 1942, filed a timely complaint in the Court below. That Court, on May 28, 1943, in a divided opinion, held that petitioner's public warehouse business was not a "public utility" within the meaning of the Price Act (R. 109-144). The petitioner's rates and charges were therefore found to be subject to the control of the Price Administrator and the complaint was dismissed (R. 145).

The Court, in an opinion written by Judge Maris, held that the term "public utility," as used in the Price Act, is limited to those classes of business, such as electric, gas, light, heat, power, water, telephone, and telegraph companies, "which are now almost universally treated as public utilities . . ." (R. 116). The Court held, as a corollary to this that so-called "traditional" public utilities, even though they be actually unregulated, are exempt from price control (R. 114). Judge Vinson wrote a dissenting opinion, (R. 119) in which the view was expressed that petitioner's warehouse business had the characteristics ascribed to public utilities by widespread usage and that it was therefore a "public utility" within the meaning of the Price Act.

Judge Magruder, in concurring with Judge Maris, began by saying:

> "With some hesitation, I concur in the result reached by Judge Maris. This is one of those unfortunate cases

where doubts would remain whichever way the case was decided.

"Judge Vinson in his dissenting opinion has amply demonstrated that complainant has the characteristics of a 'public utility' within the connotation of that phrase in widespread usage." (R. 118)

Judge Magruder did not accept this conception, however, and said:

"* * * I think a candid examination of the legislative history indicates that Congress in Section 302 (c) was probably not using 'public utility' as a term of art; if it had been, Congress would hardly have left without precise definition so elusive a phrase. Congress was, I am inclined to think, using the term loosely and somewhat vaguely as comprehending the familiar and garden variety businesses which would immediately suggest themselves to the lay mind when the phrase 'public utility' is used, and which universally, or almost universally, are under existing federal, state or municipal rate regulation." (R. 118, 119)

Judge Maris concurred in Judge Magruder's opinion, which, as had been noted, was arrived at "with some hesitation." (R. 119)

Judge Vinson apparently decided that the concurring opinion of Judge Magruder called for further comment, for he then added to his dissenting opinion this statement:

"My brothers who stand for affirmance have said that we must take the term 'public utility' in its 'natural and ordinary meaning.' They also appear to agree with the conclusions which I have reached as to that natural and ordinary meaning. They seek, however, to deny the appropriateness of that meaning in the case at bar, saying that in this particular act Congress employed a meaning which is narrower than the usual usage. They urge that the term was used in the Price Act to include only those familiar and traditional public utilities— 'garden variety' stock, as Judge Magruder says. But those who assert a special meaning are charged with its proof. In the absence of a definite showing of the limited meaning, the natural

and ordinary connotation must prevail. Any limitation must be deducible as a clear and ready inference from the Congressional language. I have looked in vain for such language." (R. 141)

## QUESTIONS TO BE ARGUED HEREIN.

This brief is filed in support of the following propositions:

1. The court below erred in holding that the term "public utility," as used in the Price Act, comprehends only such enterprises as are now almost universally treated as public utilities for the purpose of regulation under statute statutes.

2. The court below erred in holding that petitioner's public warehouse business is not exempt from price control under the Price Act.

## SUMMARY OF ARGUMENT.

1. Congress intended to exempt from the Price Act, as "Public Utilities," public storage warehouses under actual maximum rate control by a state regulatory commission. An enterprise is not exempt under the statutory provisions in question, unless subject to actual maximum rate regulation by a Federal, State or municipal authority. This authority must be a rate regulatory commission, whatever its name may be. Petitioner is subject to rate regulation by the California Railroad Commission. In addition, there are many other circumstances indicating that petitioner is a public utility. Had Congress intended a narrower construction, it would have defined the term. The Act, as amended, read as a whole, does not indicate that Congress was using the term public utility, "loosely" or "vaguely." Congress did not intend to limit the term to the concept which would suggest itself to the lay mind. The context immediately preceding the proviso does not support a narrower construction. Rules of statutory construction do not support a narrower construction. Under respondent's in-

terpretation an arbitrary line must be drawn between enterprises having the same characteristics and subject to the same regulatory controls. No unjustified economic preferences and no undesirable regional competition will result if petitioner's position is sustained. Under repsondent's reasoning, unregulated "traditional" public utilities are denied any procedure to increase or adjust rates. The intervening administrative ruling before enactment of the Inflation Control Act does not, under the circumstances, lend support to respondent's contention.

2. Respondent's concept of exempt public utilities is not in consonance with the policy and purposes of the Price Act. *Amicus curiae* takes the view that only enterprises subject to actual public utility rate regulation are exempt. Respondent contends that all "traditional" public utilities, whether or not subject to actual rate regulation, are exempt. This would create a gap in the stabilization program. The declared purposes and objectives of the Price Act indicate that no such gap was intended by Congress. The legislative history shows that Congress recognized the dangers of leaving public utilities uncontrolled as to rates and charges. The gap, which adoption of respondent's concept would create, is not an inconsequential one. Requiring respondent to control the prices of unregulated public utilities would not impose an unreasonable administrative burden. Respondent's interpretation would result in burdensome and unnecessary *dual* price control. The legislative history of the Norris Amendment shows that Congress specifically rejected the proposal that enterprises subject to rate regulatory commissions should be subjected also to price control by the Price Administrator.

## ARGUMENT.

### Congress Intended to Exempt from the Price Act, as "Public Utilities," Public Storage Warehouses Under Actual Maximum Rate Control by a State Regulatory Commission.

The principal purpose of the Price Act, as stated in the first section thereof, is to "stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents . . ." The second section provides that the Price Administrator may, by regulation or order, establish the maximum price "of a commodity or commodities." By section 302(c) (2) of the Act (50 U. S. C. A. App., section 942(c) (2), certain commodities are expressly exempted from regulation by the Price Administrator. This section provides, in part:

> "(c) The term 'commodity' . . . includes services rendered . . . in connection with the . . . distribution, storage . . . of a commodity: *Provided*, That nothing in this Act shall be construed to authorize the regulation of . . . (2) rates charged by any common carrier or other public utility . . ."

Common carriers or other public utilities, the rates of which were exempted under the above-quoted proviso, were thereafter, by the amending Inflation Control Act of October 2, 1942 (50 U. S. C. A. App., sections 961-971), required to follow a certain procedure before instituting general rate increases. This procedure is set forth, in a proviso to section 1 of the amendatory act, as follows:

> "The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: *Provided*, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such

agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase.'" (50 U. S. C. A. App., 961)

Reading together the proviso of the Price Act and the proviso of the Inflation Control Act, both quoted above, it is clear that no enterprise is to be regarded as a public utility, and so exempt from price control, unless it is subject to the jurisdiction of some Federal, State, or municipal rate regulatory commission. Only such an enterprise could, before making a general rate increase, consent "to the timely intervention by such agency before the Federal, State or municipal authority having jurisdiction to consider such increase."

But the proviso to the Inflation Control Act indicates not only what enterprises are *not* to be regarded as "public utilities," and therefore not exempt. It also goes a long way toward indicating what enterprises *are* to be regarded as "public utilities."

The Federal, State, or municipal "authority" referred to in the proviso is obviously a railroad or utility regulatory commission or, in the case of municipalities, the city council or other legislative branch of local government. Public utilities do not have their rates fixed by any other kind of Federal, State or local authority.

The Court below suggested that a chancery court might be regarded as such an authority in states where there is no rate regulation. It is true that courts of chancery and equity have jurisdiction to consider the reasonableness of public utility rates upon the filing of a complaint by an aggrieved party, even in the absence of statutory provision for regulation. But never is a public utility required to go into such a court itself to obtain approval of its rates or authority to increase them. Hence, there being no court action pending, such a utility could not consent to the "timely intervention" of respondent. Intervention is the act by which a third party demands to be received as a

party in a suit pending between other persons. *Stillwell Hotel Co.* v. *Anderson,* 61 P. 2d 71 (Cal.).

Moreover, legislative history makes clear that the word "authority" refers to regulatory commissions and not to courts of law. Senator Brown, reporting to the Senate on the substitution, for the Norris Amendment, of the proviso presently contained in the Inflation Control Act, said:

> "There is substituted for it a provision which will require any public utility which asks for an increase in rates to notify the President and to assent to the appearance of such agent as the President may designate to appear in behalf of the consuming public *before the appropriate railroad or public utility commission, be it a State, Federal, or municipal commission.*" (Italics supplied) (Congr. Record, Vol. 88, No. 168, pp. 7970, 7971)

It seems clear, from what is said above, that any enterprise which is subject to maximum rate control by a state regulatory commission engaged in regulating the classes of business which respondent himself concedes are public utilities, is, in the absence of special circumstances, a "public utility" as Congress used that term in these Acts and, hence, exempt from control by the Price Administrator. Such a construction gives full effect to the general purpose of the legislation—the control of prices of all kinds. An enterprise so situated, and no others, is in a position to give the "consent" required by the proviso to the Inflation Control Act.

Needless to say there are no special circumstances existent in this case which point to any different conclusion with respect to petitioner's business. Quite to the contrary, ther are many circumstances, in addition to the foregoing, to indicate that petitioner is a "public utility" as Congress intended to use that term. Petitioner conducts a public warehouse business. This class of business has been, since the leading case of *Munn* v. *Illinois,* 94 U. S. 113, declared to be a business affected with a public interest. Had the

term "public utility" been in vogue in 1876 when *Munn* v. *Illinois* was decided, there is little doubt that the Court would have termed grain warehouses "public utilities." As stated by Judge Vinson:

> "There is evidence, however, in more recent Supreme Court decisions that that Court has considered public warehouses to be in the public utility category. The *Munn* case has frequently been the only citation offered in support of a proposition of law relating to *public utility* regulation. (citing *Producers Trans. Co.* v. *Railroad Comm. of Calif.*, 251 U. S. 228, 231; *Terminal Taxicab Co.* v. *District of Columbia*, 241 U. S. 252, 254; also in *City of Phoenix* v. *Kasun*, 54 Ariz. 470, 97 P. (2d) 211, 212)" (R. 132)

Petitioner's business is, pursuant to the California State constitution and statutes, declared to be, and regulated as, a public utility by the California Railroad Commission (R. 2-5). Under such regulation, petitioner is obliged to afford its facilities to the public generally, upon demand, at fair and non-discriminatory rates (R. 22, 23). Petitioner operates its business pursuant to a certificate of convenience and necessity (R. 134).

As against this imposing array of circumstances supporting petitioner's status as an exempt "public utility," what substantial arguments can be produced? The Court below, after recognizing that petitioner has the characteristics of a public utility, as that term is generally understood, says that Congress had a narrower concept in mind—that it was using the term:

> ". . . loosely and somewhat vaguely as comprehending the familiar and garden variety businesses which would immediately suggest themselves to the lay mind when the phrase 'public utility' is used, and which universally, or almost universally, are under existing federal, state or municipal rate regulation." (R. 119)

But if Congress intended such a construction to be placed upon this term, why did it not see fit to define the term? It would have been a simple matter for Congress to have listed

the "traditional" public utilities if it intended such a limitation. A statute should not be given a strained construction to effect a result which could easily have been obtained by plain enactment. *State* v. *Dailey*, 234 N. W. 45 (So. Dak.).

A reading of the entire Act does not leave one with the impression that Congress intended to speak "loosely" or "vaguely" with respect to any of its parts. Precise and detailed provisions are made covering every phase of the subject matter. Eleven terms are separately defined, including such common terms as "sale," "price," and "person." Congress would surely have indicated by definition or other context that a narrow construction was intended, if such had been the case.

It was suggested by Judge Magruder that Congress intended the term "public utility" to comprehend "the familiar and garden variety businesses which would immediately suggest themselves to the *lay* mind . . . ." (R. 119) (Italics supplied). But this is an Act of general application and nationwide scope. It establishes administrative machinery, provides a complete appeal procedure, sets up guides for other federal agencies and deals with some of the most intricate and important relationships of the business world. It was prepared by lawyers, is administered with the assistance of lawyers, and provides a special court for judicial review. No court has defined the term "public utility" as being limited to "traditional" public utilities. Viewing the Act as a whole, it seems highly improbable that Congress, while couching the rest of the Act in explicit legal terms, intended the one phrase "public utility" to be interpreted as it would be understood by the "lay mind."

The Court below sought to find significance in the fact that the section which contains the proviso exempting public utilities states that the term "commodity" as used in the act "includes services rendered . . . in connection with the processing, *distribution*, *storage* . . . of a commodity."

(Italics supplied) Judge Maris concluded that "Here is definite indication that storage of commodities, the business of a public warehouseman, is intended to be covered by the act." (R. 116) Of course if this were true, all common carriers would also be excluded from the term "public utility," for they are engaged in the "distribution" of commodities. The plain fact is that some distribution and some storage facilities are subject to the controls of the Price Administrator, but when either is conducted as a public utility then, as Judge Vinson expressed it, "It falls within the provided exemption, which is dominant and controlling." (R. 143)

In support of the narrower construction of the phrase "public utility" reliance is placed upon various rules of statutory construction. One of these is the well-established rule that exceptions to a general policy should be strictly construed. *Spokane & Inland R. R.* v. *United States*, 241 U. S. 344. But it is also well established that rules of statutory construction are never used to create, but only to remove, a doubt. *Dewey* v. *United States*, 178 U. S. 510, *Russell Motor Car Co.* v. *United States*, 261 U. S. 514, *Wilbur* v. *United States*, 30 F. (2d) 871. When the ordinary meaning has been ascertained, the Court has no further inquiry to make, *Hamilton* v. *Rathbone*, 175 U. S. 414, and hence has no occasion to apply "strict" or "liberal" construction.

Another rule of statutory construction which has been advanced as supporting the limitation of the term "public utility" to those enterprises universally or almost universally regulated as such, is the rule that "descriptive terms used in a federal statute will, in the absence of language in the statute indicating a contrary intent, be given a general and uniform interpretation throughout the country." (R. 111) As we have pointed out above, there *is* language in the statute—contained in the proviso to section 1 of the Inflation Control Act—indicating that the exemption is to apply to any public utility subject to rate control by a reg-

ulatory commission, Federal, State or local. In view of the express language in the Act, this rule of statutory construction has no function to perform.

Moreover, respondent itself has not, under its interpretation, found a way to arrive at full and complete uniformity in all particulars, even within the restricted classes of business which he acknowledges are public utilities. As Judge Vinson has so ably expressed it:

> "The Price Administrator did not apply his so-called 'uniformity' rule in issuing regulations under the Price Act. Therein public utilities are exempted from regulation. In Supplementary Regulation No. 11, Amendment No. 1, however, in exempting certain enterprises from price regulation, the Price Administrator included gas, electric, water, *et al.*, companies furnishing or supplying *'as public utilities.'* (Italics supplied) Clearly, however, if all companies producing gas, electricity, and water were public utilities, the quoted appendage to the exemption is superfluous. It is a well known fact that there are many companies furnishing these facilities which are not public utilities, and any attempt to treat them as such would be in derogation of due process. Some of them are public utilities, and some of them are not, all depending upon how they are organized and operated. One will be burdened with the essential characteristics of which I have spoken. Another will not be. One will be subject to the controls of the Price Administrator, the other will not be subject. So it is, and must be, with public warehouses." (R. 138)

Accepting, for the moment, respondent's view that the term "public utility" is limited to so-called "traditional" public utilities, where is the line to be drawn and who is going to draw it? Respondent does not classify storage warehousemen as "traditional" public utilities, although they are regulated in twenty-two states (Chart, Appendix B, Petitioner's brief herein). Yet respondent regards heating companies as public utilities and exempts them from price regulation (R. 103), although they are regulated in

only twenty-eight states. Does the existence of state regulation in a bare majority of states classify a business as a "traditional" public utility? It would seem so in view of the practical application of the concept which respondent has made.

The Court below voices this further view:

> "Particularly in the light of the wide variety of businesses which have been designated and regulated as public utilities in some of the states (citing examples) there is compelling force in the Price Administrator's argument that under such an interpretation of the act unjustified economic preferences, regional competition and other evils might well result." (R. 112)

It is difficult to see how "unjustified economic preferences, regional competition and other evils" will result from a ruling that an enterprise already subject to complete rate regulation by a rate regulatory commission need not submit also to rate regulation by the Price Administrator. The enterprises of this character which are subject to price control by the Price Administrator and those subject to rate regulation by state commissions would be substantially similarly situated.

The "unjustified economic preferences" and "regional competition" will result, not from the interpretation *amicus curiae* supports, but from respondent's, whereby one enterprise may be subject to dual price and rate regulation while a competitor in an adjoining state may be subject to neither one nor the other.

Under respondent's reasoning how is an unregulated "traditional" public utility to make any rate increase which may prove necessary? It cannot apply to the Price Administrator for an adjustment of established maxmum prices, for respondent says such a utility is not subject to the Price Administrator's regulations. It cannot follow the procedure provided in the Inflation Control Act, for that procedure is available only to a regulated utility which can "consent to the timely intervention by respondent before

the Federal, State, or municipal authority having jurisdiction to consider such increase." Hence, under respondent's reasoning, such public utilities are without any procedure for obtaining rate increases and adjustments. Can it be that Congress intended to create such a discrimination, hardship and absurdity? The question answers itself.

The lower court called attention to the failure of Congress to further define the term "public utility" in the Inflation Control Act, after the Price Administrator had issued the intervening administrative interpretation contained in Amendment No. 1 to Supplemental Regulation No. 11 (R. 114). This interpretation granted complete exemption to nine classes of common carriers and other public utilities without regard to their status as to existing rate regulation. In answer to this we can do no better than to quote Judge Vinson's effective reply:

> "It is true that the courts have given weight to an intervening administrative interpretation which has been the subject of considerable practice and tacit approbation. I do not feel, however, that it may be fairly said that the regulation, upon which the majority rules, imputes notice to Congress. The statement that warehouses and storage are to be considered subject to the General Maximum Price Regulation serves no indication that the Price Administrator did not consider such regulation subordinate to the provisions of the Price Act exempting 'public utilities' from regulation, and that he did not intend to exempt those warehouses which were so treated. The reliance upon such an interpretation begs the question which we are here called upon to decide, as I see it. At any rate, it can hardly be expected that Congress, as a whole, would be acquainted with the prodigal detail of the Price Administrator's orders and regulations, and particularly with an interpretation which was hidden in the recesses of a proviso to the 68th item of an order amending a supplementary regulation to an original order, which was of three and a half months' duration and had not been interpreted by this Court." (R. 141)

**Respondent's Concept of Exempt Public Utilities is Not in Consonance with the Policy and Purposes of the Price Act.**

It is the position of *amicus curiae* that for an enterprise to be an exempt public utility, within the meaning of the Price Act, it must be subject to actual maximum rate regulation. Respondent takes the view that all "traditional" public utilities, and no others, are included within the exemption. This position has forced respondent to contend that unregulated "traditional" public utilities are free and clear of price control by the Price Administrator. A gap in the stabilization program is thereby created.

That Congress did not intend to leave a gap in over-all price control by exempting, as public utilities, enterprises which are not subject to rate regulation, is clearly apparent from a study of the general purposes and objectives of the Price Act. It is well settled that a statute will be construed in the light of its general objectives and the legislative policy revealed in the Act. *Prussian* v. *United States*, 282 U. S. 675.

The first section of the Price Act (50 U. S. C. A. App. 901) contains these sweeping declarations of purpose:

> "(a) It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents . . . to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in price. . . ."

Here is no indication that Congress intended to create a gap in the price control of one of the most important parts of the economic structure—public utilities. The nationwide dangers of inflation, so thoroughly dealt with by the Price Act in every other respect, would be left unchecked in an important field of business activity if public utility services throughout the country, of the "traditional" type or not, were omitted from price control through the circumstance that there is no existing rate regulation. That Congress was apprised of this danger is indicated by the fact that Mr. Leon Henderson, in his testimony on the bill before the House Committee on Banking and Currency, said (Part I of Hearings, page 144):

> MR. HENDERSON: I do not regard it necessary to include in a price bill all the elements such as utility costs, interest charges, transportation costs, personal services, *but I am not unmindful that unless they are kept within bounds it would be impossible to prevent inflation.* (Italics supplied)

The gap which respondent's construction of the phrase "public utility" has left in nationwide price control is not an inconsequential one. Since none of the "traditional" public utilities in Delaware are subject to rate regulation, they all escape price regulation under the Price Act. Truck rates are not regulated in Illinois, New Hampshire, or New Jersey; express companies are not regulated in Indiana; electric companies are not regulated in Florida, Iowa, Minnesota, Mississippi, Nebraska, or South Dakota; gas companies are not regulated in Florida, Indiana, Iowa, Minnesota, Mississippi, Nebraska, and South Dakota; telephone companies are not regulated in Iowa, Minnesota, or Texas; water companies are not regulated in Florida, Iowa, Michigan, Minnesota, Mississippi, New Mexico, or South Dakota, (Appendix "B," Petitioner's brief herein.) Under respondent's reasoning, all of these important "traditional" public utilities escape price regulation or rate regulation of any kind or character save in such cases as a chancery court

might take jurisdiction upon the filing of a complaint as to reasonableness of rates.

The respondent asserts, and the Court below adopts, the view that to require the Price Administrator to fix prices of unregulated "traditional" public utilities would place upon him an unreasonable administrative burden. "(It) would in effect," the Court says, "make the Price Administrator a public utility commission for the State of Delaware." (R. 112)

We respectfully submit that the controlling of utility prices in Delaware should not seem so tremendous or frightful a task in the light of respondent's vast price control activities in other fields. Can it be that Congress was willing to let respondent fix retail and wholesale prices of numberless commodities the country over, but that it regarded the control of utility prices in Delaware too great a task? Is it probable that Congress regarded respondent capable of fixing the price of coal throughout the nation and the price to be paid the farmer, the dairyman, the lumberman, and the manufacturer—but not capable of fixing the price of telephone calls in Iowa?

It has already been pointed out that respondent's position leads to the result that in Delaware there is neither rate regulation by the state nor price regulation by the Price Administrator. The same is true in all of the other states where one or more classes of "traditional" public utilities are not subject to state rate regulation. On the other hand, respondent's position also leads to the result that there is *dual* price regulation of public storage warehouses in California and the twenty-two other states where such businesses, or some types thereof, are subject to rate regulation. Double price control serves not to promote, but to confuse and render burdensome and unfair the nationwide system of controls which Congress had in mind. As this Court said in *United States* v. *Katz*, 271 U. S. 354, 357:

> "All laws are to be given a sensible construction, and a literal application of a statute, which would lead to

absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose."

Reference to the legislative history of the Inflation Control Act shows conclusively that Congress was desirous of avoiding dual price regulation. On the floor of the Senate, on September 10, 1942, Senator Norris of Nebraska, offered a bill, the purpose of which was to amend the Price Act to require:

> "That rates charged by any common carrier or other public utility shall not be increased without the consent of the Price Administrator." (Congr. Record, Vol. 88, No. 155, pp. 7343-7346, set out in Appendix "A" of Petitioner's brief herein, page XX)

This amendment would have subjected all public utilities to dual rate regulation, regulation by their respective regulatory commissions having jurisdiction, and by the Price Administrator. The Norris Amendment, with slight changes by the Senate, was incorporated into H. R. 7565 (Appendix "A" of Petitioner's brief herein, page XX). This amendment was rejected by the Senate after the House conferees refused to accept it. For the Norris Amendment there was substituted the present proviso to section 1 (50 U. S. C. A. App. 961) of the Inflation Control Act (Appendix "A" of Petitioner's brief herein, page XXI). By this action Congress specifically rejected the proposal that enterprises, subject to rate control by state regulatory commissions, should be subjected also to price control by the Price Administrator.

## CONCLUSION.

The judgment below should be reversed.

Respectfully submitted on behalf of the National Association of Railroad and Utilities Commissioners.

JOHN E. BENTON,
FREDERICK G. HAMLEY,
*Attorneys for said Association,*

November 15, 1943.

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# SUPREME COURT OF THE UNITED STATES.

No. 112.—October Term, 1943.

Davies Warehouse Company, Petitioner, *vs.* Chester Bowles, Price Administrator. } On Writ of Certiorari to the United States Emergency Court of Appeals.

[January 31, 1944.]

Mr. Justice Jackson delivered the opinion of the Court.

The petitioner, Davies Warehouse Company, is incorporated under the laws of California and conducts a public warehouse in Los Angeles. Its business is declared to be that of a public utility both by the Constitution of California[1] and its Public Utilities Act.[2] The Act subjects to regulation by the Railroad Commission all warehouses which serve the public generally for compensation. § 2½. New warehouses may be established only after obtaining certificates of public convenience and necessity, which the Commission may refuse or condition and may suspend or revoke at any time for cause. § 50½. Petitioner must grant nondiscriminatory and equal rates to everyone, and it may not alter any existing rate or charge without permission. §§ 19, 15. The Commission upon its own motion or upon complaint may determine "the just reasonable and sufficient rate" and fix the same by order.

[1] "The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for storage and wharfage, in which there is a public use . . . ." California Constitution, Art. IV, § 33.

"Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe-line, plant, or equipment, or any part of such railroad, canal, pipe-line, plant or equipment within this State for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the Legislature . . . ." California Constitution, Art. XII, § 23.

[2] California Gen. Laws (Deering, 1937) Act 6386, § 2(dd).

§ 32. Petitioner is required to make periodic reports and is subject to numerous restrictions and disabilities. §§ 29, 51, 52, 75, 76, et al.

Several public warehouses, including the one before us, made application to the Commission for general rate increases. The Commission gave a public hearing in February 1942. From undisputed testimony it appeared that: notice of hearing had been sent to over 3,000 customers and no one appeared in opposition; rates had not been advanced since 1938; wages, however, had been advanced on four different occasions; materials and supplies and wages of clerical and supervisory employees had also increased; overall costs of operation had risen during the period 20-26 per cent. On May 12, 1942, the Commission authorized a general 15 per cent advance which, it said, "will permit applicants to increase their rates to reimburse them in part for their added labor expense." The permission was so conditioned, however, that the reasonableness of any particular rate could be attacked by any customer, either by way of reparation proceeding, for which the Act makes provision, or otherwise. The effective date of the new rates was set by the Commission as May 22, 1942.

In the meantime the United States Price Administrator, acting under the Emergency Price Control Act,[3] on April 28, 1942 issued a General Maximum Price Regulation. The effect of the federal regulation and later amendments would have been to prohibit petitioner after July 1, 1942 from charging the rate authorized by the California Railroad Commission.

This federal Act provides that "nothing in this Act shall be construed to authorize the regulation of . . . (2) rates charged by any common carrier or other public utility."[4] Petitioner, asserting itself to be within this exemption, made timely protest to the Price Administrator, which was denied. It then filed a complaint

[3] 56 Stat. 23, 50 U. S. C. (Supp. II, 1942) § 901 *et seq.*

[4] § 302(c), 50 U. S. C. (Supp. II, 1942) § 942(c), reads: "The term 'commodity' means commodities, articles, products, and materials (except materials furnished for publication by any press association or feature service, books, magazines, motion pictures, periodicals and newspapers, other than as waste or scrap), and it also includes services rendered otherwise than as an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establishment for the servicing of a commodity: *Provided*, That nothing in this Act shall be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees, or (2) rates charged by any common carrier or other public utility, or (3) rates charged by any person engaged in the business of selling or under

with the United States Emergency Court of Appeals, on which the Act confers exclusive original jurisdiction to determine the validity of regulations,[5] asking it to set aside the General Maximum Price Regulations in so far as they purport to regulate its charges. The Emergency Court of Appeals dismissed the complaint. Importance of the construction of the Act to its administration led us to grant certiorari. — U. S. —.

Congress, in omitting to define "public utility" as used in the Act, left to the Administrator and the courts a task of unexpected difficulty. Use of that term in a context of generality wears an appearance of precision which proves illusory when exact application becomes necessary. Relevant authorities and considerations are numerous and equivocal, and different plausible definitions result from a mere shift of emphasis. It may be contended that the exemption runs in favor of any business generally and traditionally regarded as a utility, irrespective of actual state regulation. Or it may be urged to include any enterprise actually regulated as are utilities, regardless of traditional classification. Or it may be said to extend only to those businesses where actual utility regulation exists along with general and traditional utility character.

The Emergency Court of Appeals weighed the conflicting factors in thorough opinions and divided as to result.[6] Judges Maris and Magruder gave little weight to the existence of actual regulation and held the phrase to comprehend enterprises of the general utility type, among which they thought this warehouse had no place. They held that the federal price regulation superseded that of the state, but said, "This is one of those unfortunate cases where doubts would remain whichever way the case was decided"—a reservation we share. Chief Judge Vinson declared

writing insurance, or (4) rates charged by any person engaged in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting station, a motion-picture or other theater enterprise, or outdoor advertising facilities, or (5) rates charged for any professional services."

[5] § 204(d), 50 U. S. C. (Supp. II, 1942) § 924(d), provides: " . . . The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. . . ."

[6] 137 F. 2d 201.

that this public warehouse possesses the basic indicia of a public utility and in addition has its rates fixed by an agency of the state, and under these circumstances must be considered a public utility within the meaning of the Act. He thought the state regulation should prevail over that of the Federal Price Administrator.

In *Munn* v. *Illinois*, 94 U. S. 113 (1877), this Court recognized that the business of public warehousing is "affected with a public interest" and that its regulation by the state is appropriate and constitutionally permissible. Cf. *Budd* v. *New York*, 143 U. S. 517, 544. Twenty-one states regulate warehouses in some respects.[7] Three states include warehouses in their statutory definition of public utilities,[8] and eight include limited types of warehouses.[9] Forty-seven states have adopted the Uniform Warehouse Receipts Act, which gives warehouse receipts legal standing somewhat similar to that of a common carrier's bill of lading.[10]

We cannot, therefore, assume that Congress was unaware that a general statutory reference to "public utilities" might well be taken at least in some states to comprehend public warehouses. But Congress did not see fit to employ that precision of definition which it has used when it desired to make sure that its classification of public utilities for federal purposes would depend upon the nature of their activities uninfluenced by any state policy.[11] Legislative history is ambiguous, and in no instance was attention directed to the particular problem presented here as to the.

[7] Arizona Code (1939) § 52-901; Arkansas Acts 1935, Act 83; California Gen. Laws (Deering, 1937) Act 6386, § 2 *et seq.*; Idaho Code Ann. (1932) § 59-128; Illinois Rev. Stat. (Bar Assn. ed. 1943) c. 111⅔, § 10 *et seq.*, c. 114, § 189 *et seq.*; Indiana Stat. Ann. (Burns, 1933) § 54-105 *et seq.*; Kansas Gen. Stat. (1935) § 34-224 *et seq.*; Maine Rev. Stat. (1930) c. 62, § 15 *et seq.*; Minnesota Stat. (1941) c. 233; Missouri Rev. Stat. Ann. (1941) § 14685.1 *et seq.*; Nebraska Comp. Stat. (Supp. 1941) c. 88, § 219 *et seq.*; Nevada Comp. Laws (1929) § 6106 *et seq.*; North Carolina Code Ann. (1939) § 5124, Laws 1941, c. 291; North Dakota Comp. Laws (Supp. 1925) § 4609, c. 2, *et seq.*, Laws 1931, c. 227; Oklahoma Stat. (Supp. 1943) tit. 81; Oregon Comp. Laws Ann. § 60-301 *et seq.*; South Dakota Code (1939) c. 60.03; Texas Stat. (Vernon, 1936) art. 6445; Utah Code Ann. (1943) § 76-2-1 *et seq.*; Washington Rev. Stat. Ann. (Remington) §§ 10344, 10392, (Supp. 1940) § 11569-1 *et seq.*; Wisconsin Stat. (1941) § 195.21.

[8] California, Indiana, South Dakota, *loc cit. supra* note 7.

[9] Arizona, Idaho, Illinois, Maine, Nevada, North Dakota, Utah, Washington, *loc cit. supra* note 7.

[10] 3 Uniform Laws Ann. (Supp. 1942) 6.

[11] E. g., Public Utility Holding Company Act of 1935, § 2(a), 49 Stat. 804, 15 U. S. C. § 79b(a); Federal Power Act, § 201(e), 49 Stat. 848, 16 U. S. C. § 824(e).

scope of the term "public utility." But the phrase was used to measure inclusions as well as exemptions and it seems to have been employed in a practical rather than legalistic sense. An effort was made in the Senate to insert a provision that public utility rates should not be increased without consent of the President.[12] That proposal was rejected, however, and a provision was substituted which required any public utility which asked for an increase in rates to notify the President and to assent to the appearance of such agent as the President may designate to appear in behalf of the consuming public before the appropriate railroad or public utility commission, be it a state, federal, or municipal commission.[13] It is difficult to believe that a different scope was intended to be given to the same words in different sections of the bill. The use of the same generic term in these different contexts indicates that it had no narrower connotation and should receive no stricter interpretation in the exemption merely because used to define an exemption.

Legislative history is unequivocal in its showing that rates already subject to state regulation as public utility rates were not considered in need of further control. Mr. Leon Henderson, one of the authors of the bill and the first Price Administrator, gave as reasons for exempting utilities that they seemed to be under an adequate system of state regulation;[14] that this was an area not likely to give difficulty or to cause, so far as could then be seen, any inflationary trend; that utilities had problems peculiar to themselves and no further regulation seemed necessary;[15] and

[12] Amendment proposed by Senator Norris to S. J. Res. 161. H. R. 7565, as amended by Senate, § 1, 77th Cong., 2d Sess.

[13] 56 Stat. 765, 50 U. S. C. (Supp. II, 1942), § 961.

[14] ". . . and public utilities were under what for the time being at least seemed to be an adequate system of State regulation, and therefore did not need to be brought into review." Hearings before House Committee on Banking and Currency on H. R. 5479, 77th Cong., 1st Sess., Pt. I, Revised, p. 444.

[15] "Now, as to the utilities. There is, as the members are aware, an adequate set of regulations as to the charges which utility companies can make. These, again, are based upon a long series of judicial determinations, of State regulations and of State laws. It seemed to those drafting the bill that this was an area which was not likely to give difficulty or to cause, so far as they could see at that time, any inflationary trend. The bill is designed to control an emergency inflationary situation and has left them out, just as it has transportation rates. There are questions peculiar to utilities and none of them, so far as I see at the present time, would make necessary further regulation by means of a price control bill." *Id.*, p. 54-55.

that he had found the agencies in control of utility rates "just as earnest as we are about keeping those costs down."[16]

Under these circumstances the reasonable view appears to be that Congress by the term "public utilities" exempted those whose charges already were regulated as public utilities and hence were not probable sources of inflationary dangers. It may be and probably is the case that in its rate regulation the California Commission will take account of different factors and have different objectives than does the Federal Price Administrator. That might have appealed to Congress as a reason for not exempting utilities at all, but it hardly helps define the limits of the exemption, for that objection is as cogent against what admittedly is included as against that which is left in doubt.

We think Congress desired to depart from the traditional partitioning of functions between state and federal government only so far as required to erect emergency barriers against inflation. No question as to the power of Congress to reach and regulate this business, should it find it necessary to do so, has been raised here. But as matter of policy Congress may well have desired to avoid conflict or occasions for conflict between federal agencies and state authority which are detrimental to good administration and to public acceptance of an emergency system of price control that might founder if friction with public authorities be added to the difficulties of bringing private self-interest under control.[17] Where Congress has not clearly indicated a purpose to precipitate conflict, we should be reluctant to do so by decision.[18] In view of assurances to Congress that the evil would proceed only in a minor degree, if at all, from public utilities already under state price control, we think Congress did not intend, and certainly has given no clear indication that it did intend, to supersede the power of a state regulatory commission, exercising comprehensive control over the prices of a business appropriately classified as a utility. Classification by California of the public warehouse

[16] ". . . I have found that every one of the agencies charged with these particular items of cost are just as earnest as we are about keeping those costs down." *Id.*, p. 445; see the dissenting opinion of Chief Judge Vinson in the Emergency Court of Appeals, 137 F. 2d 201, 205.

[17] The National Association of Railroad and Utilities Commissioners has filed a brief *amicus curiae* in opposition to what they consider an invasion by the Price Administrator of their field of public regulation.

[18] Terminal Railroad Association of St. Louis v. Brotherhood of Railroad Trainmen, 318 U. S. 1.

business as a utility is not novel, surprising, or capricious. The regulation imposed is not merely nominal or superficial but appears to be penetrating and complete. Therefore, we would have little hesitation in holding that petitioner's public warehouse under the circumstances is a public utility within the exemption of the Price Control Act, but for certain practical objections to that interpretation, urged on behalf of the Administrator with an earnestness which deserves, in view of the difficulties and importance of his task, careful examination.

1. It is urged that if the status of an industry under state law is to be considered, the Administrator "would have to face the question whether the particular business concerned was sufficiently 'affected with a public interest' constitutionally to justify the type of legal obligation which the state imposes." The argument, in short, is that the Administrator would have to decide whether the state regulation is constitutional before he should recognize it. We cannot give weight to this view of his functions, which we think it unduly magnifies. State statutes, like federal ones, are entitled to the presumption of constitutionality until their invalidity is judicially declared. Certainly no power to adjudicate constitutional issues is conferred on the Administrator. Collusion between a state and a favored industry to impose forms of local regulation as a shield against federal control might be conceivable and if such a sham occurred the Administrator could perhaps challenge its effectiveness to support an exemption. But it more nearly accords with experience to assume that an industry does not submit to price regulation until it has explored all possible constitutional objections and litigated hopeful ones. We think the Administrator will not be remiss in his duties if he assumes the constitutionality of state regulatory statutes, under both state and federal constitutions, in the absence of a contrary judicial determination.

2. It also is objected that if we consider the status of an industry under state law, the Price Administrator "would have to scrutinize and differentiate many kinds of franchises. Thus the Administrator, as an incident to the task of price control, would be called upon to determine in any number of particular instances questions of state law which require the most painstaking examination of statutes and decisions." We are not prepared to deny that in some degree this will be true, for we do not hold that all warehouses, or even that all warehouses regulated in

some aspects, come within the exemption. We think the Administrator will have to form judgments and that they will be judgments of some difficulty. Simplicity of administration is a merit that does not inhere in a federal system of government, as it is claimed to do in a unitary one. A federal system makes a merit, instead, of the very local autonomy in which complexities are inherent. Nor would the interpretation advocated by the Administrator avoid the necessity of ascertaining and considering rights thought to be possessed under local laws and not likely to be yielded readily. One effect of the Administrator's interpretation would be to postpone study of local laws from consideration in connection with wise administration to the time of litigation, as in this case. Local institutions, customs, and policies will not be overridden without fighting for consideration. The existence and force and function of established institutions of local government are always in the consciousness of lawmakers and, while their weight may vary, they may never be completely overlooked in the task of interpretation. At a time when great measures of concentration of direction are concededly necessary, it may be thought more farsighted to avoid paralyzing or extinguishing local institutions which do not seriously conflict with the central government's place. Congress has given no indication that it would draw all such state authority into the vortex of the war power. Nor should we rush the trend to centralization where Congress has not. It could never be more appropriate than now to heed the maxim reiterated recently by the Court that "the extension of federal control into these traditional local domains is a 'delicate exercise of legislative policy in achieving a wise accommodation between the needs of central control and the lively maintenance of local institutions.'" *City of Yonkers* v. *United States*, No. 109, October Term, 1943, decided January 3, 1944; *Palmer* v. *Massachusetts*, 308 U. S. 79, 84. At least in the absence of a congressional mandate to that effect, we cannot adopt a rule of construction, otherwise unjustified, to relieve federal administrators of what we may well believe is a substantial burden but one implied by the terms of the legislation when viewed against the background of our form of government.

3. It also is contended that an interpretation must prevail as matter of principle which will give the exemption a general and uniform operation in all states irrespective of local law. It is, of course, true that uniform operation of a federal law is a

sirable end and other things being equal, we often have interpreted statutes to achieve it.[19] But in no case relied upon did we achieve uniformity at the cost of establishing overlapping authority over the same subject matter in the state and in the Federal Government. When we do at times adopt for application of federal laws within a state a rule different from that used by a state in administering its laws, the two rules may subsist without conflict, each reigning in its own realm. It is a much more serious thing to adopt a rule of construction, as we are asked to do here, which precludes the execution of state laws by state authority in a matter normally within state power. The great body of law in this country which controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state. The custom of resorting to them to give meaning and content to federal statutes is too old and its use too diversified to permit us to say that considerations of nationwide uniformity must prevail in a particular case over our judgment that it is out of harmony with other objectives more important to the legislative purpose.[20] What content we should give to the exemption in the case of a conventional utility not subject to a state regulatory statute or subject only to partial regulation is, of course, not before us.

4. Lastly, it is contended that we should accept the Administrator's view in deference to administrative construction. The administrative ruling in this case was no sooner made than challenged. We cannot be certain how far it was determined by the considerations advanced, mistakenly as we think, in its defense in this case. It has hardly seasoned or broadened into a settled

[19] The Administrator cites Chicago Board of Trade v. Johnson, 264 U. S. 1; Lyeth v. Hoey, 305 U. S. 188; Morgan v. Commissioner, 309 U. S. 78; Jerome v. United States, 318 U. S. 101, 104. See also Deitrick v. Greaney, 309 U. S. 190; O'Oench, Duhme & Co. v. Federal Deposit Ins. Corp., 315 U. S. 467, 470; Sola Electric Co. v. Jefferson Electric Co., 317 U. S. 173, 176; Clearfield Trust Co. v. United States, 318 U. S. 363.

[20] See Mangus v. Miller, 317 U. S. 178, Corn Exchange Bank v. Klauder, 318 U. S. 434, Myers v. Matley, 318 U. S. 622 (bankruptcy); Uterhart v. United States, 240 U. S. 598, 603, Crooks v. Harrelson, 282 U. S. 55, Blair v. Commissioner, 300 U. S. 5, Helvering v. Fuller, 310 U. S. 69, 74, Helvering v. Stuart, 317 U. S. 154 (taxation); McClaine v. Rankin, 197 U. S. 154, Rawlings v. Ray, 312 U. S. 96 (statute of limitations); Brown v. United States, 263 U. S. 78 (condemnation); New York, C. & St. L. R. R. Co. v. Frank, 314 U. S. 360, 364-66 (railroad consolidation); United States v. Oklahoma Gas & Electric Co., 318 U. S. 206; Board of Commissioners v. United States, 308 U. S. 343.

administrative practice. If Congress had deemed it necessary or even appropriate that the Administrator's order should in effect be final in construing the scope of the national price-fixing policy, it would not have been at a loss for words to say so. We do not think it should overweigh the considerations we have set forth as to the proper construction of the statute.

We hold that the petitioner's business is that of a public utility within the exemption of the Act, and the judgment below is accordingly

***Reversed.***

# SUPREME COURT OF THE UNITED STATES.

No. 112.—October Term, 1943.

Davies Warehouse Company, Petitioner, *vs.* Chester Bowles, Price Administrator. } On Writ of Certiorari to the United States Emergency Court of Appeals.

[January 31, 1944.]

Mr. Justice Douglas, with whom Mr. Justice Black and Mr. Justice Murphy concur, dissenting.

I think the present decision places an unwarranted burden on those who are waging the present war against inflation. The Act exempts from federal price control the "rates charged by any common carrier or other public utility". § 302(c). The Administrator has accordingly granted exemptions to enterprises furnishing the public with gas, electricity, water, light, heat or power, and telephone and telegraph services. That group embraces those enterprises which together with common carriers were traditionally included in the category of a "public utility". It should not be expanded by interpretation to include the filigree variety with which we are now concerned.

The purpose of the Act is to provide an instrument for national control of the inflationary forces set loose by the war. The need for uniformity in the enforcement of the Act is acute—to avoid inequality in burden and sacrifice; to weigh the odds for success as heavily as possible on the side of the public interest. The other exemptions in the Act apply uniformly throughout the country—wages, insurance rates, theatre admissions, fees for professional services, and the like. If the "public utility" exemption is confined to the traditional classes of utilities, substantial uniformity will be obtained as they are almost universally subject to rate regulation in the States. But under the view taken by the Court warehouses will be exempt in some States but not in others. The same will be true of wharves and docks, slaughter houses, public markets, cotton gins and what not. And even in the same State there will be exemptions for some warehouses but not for others. This dependence of exemptions on the vagaries of state

law would be quite understandable if the federal act were designed to mesh with state control—federal control being interposed to take up where state regulation was impossible or ineffective, as in various types of public utility regulation. Then there would be a great need in view of our federal system to preserve as much local autonomy as possible. The same would also be true where only a partial overriding of state controls was necessary to reach the limited federal objective. But the war against inflation is a grim affair calling for quite different requirements. It cannot be waged along those traditional lines. The luxuries of peace-time arrangements do not always fit the exigencies of this war emergency. Nor do the state rate-regulations in question supplement the federal system. They override it. And standards which they prescribe are not the standards for price-fixing under the present Act. The conventional power to fix rates is governed by criteria quite different from those which control the Administrator's action. He is to fix those maximum prices which "will be generally fair and equitable and will effectuate the purposes of this Act." § 2(a).

Every exception read into the Act creates another point of leakage, multiplies the task of enforcement, and creates a favored class of businesses. I would not read the Act with such a hostile eye. Where two interpretations are possible I would take the one which avoids those results. The choice between the "letter" and the "spirit" is an ancient one even in the law. See Radin, A Short Way With Statutes, 56 Harv. L. Rev. 388. In this case I think the wrong choice has been made.